IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Ganga Ram. Versus State of Rajasthan.

S.B. Criminal Misc. Petition No. 250/2006
against the order dated 2-2-2006 passed
by the Special Judge, N.D.P.S. Act Cases,
Jodhpur, in Criminal Misc. Case No.96/2006.

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Date of Order: September 12, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. L.R. Pooniya, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 2-2-2006 passed by the Special Judge, NDPS Act Cases, Jodhpur (for short, "the trial Court" hereinafter), whereby the application filed by the petitioner under Section 457 of the Code seeking release of the vehicle on interim custody, was dismissed.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Carefully gone through the order impugned.

The facts and circumstances giving rise to the instant petition are that on 24-8-2005, the police intercepted a

Mahendra Jeep bearing registration No. RJ-16Q-0242. On checking the jeep, it was found that Veera Ram S/o Bhag Chand Bishnoi was sitting on the driver's seat, which was found carrying 72 kgs. of poppy husk. The said jeep was seized . A crime report for the offence under Section 8/15 and 17 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the Act" hereinafter) was registered and the occupant of the jeep was arrested.

The said jeep is registered in the name of the petitioner. An application under Section 457 of the Code was filed by the petitioner for the interim custody of the jeep being the registered owner thereof. The trial Court, vide impugned order, dismissed the application.

Learned counsel for the petitioner has relied on a decision of the Hon'ble Supreme Court in Sunderbhai Ambalal Desai Vs. State of Gujarat etc., 2003 SCC (Cri.) 1943; and a decision of this Court in Bhanwar Lal Vs. State of Rajasthan, 2002 (2) R.Cr.D. 305 (Raj.).

Learned Public Prosecutor submits that prior to the date of the occurrence, the petitioner had sold the vehicle to accused Veera Ram on 18-4-2005 and the said vehicle was found transporting huge quantity of poppy husk, which is commercial quantity, in contravention of the provisions of the Act and, therefore, liable to be confiscated.

Sub-section (1) of Section 60 of the Act provides that whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium, poppy, coca plaint, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation. Sub-section (3) of Section 60 of the Act provides that any animal or conveyance used in carrying any narcotic drug or psychotropic substance or controlled substance, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

Thus, in the instant case, prima facie the vehicle was found transporting huge quantity of poppy husk in contravention of the provisions of the Act and as such it is liable to be confiscated unless the owner of the said vehicle establishes that the vehicle was so used without his knowledge or connivance. In the circumstances, therefore, the decisions relied on by the learned counsel for the petitioner are of no help.

At any rate, the petitioner, after having sold the vehicle to accused Veera Ram, prima facie, is not entitled for

the possession of the said vehicle.

In the circumstances, therefore, I do not find any merit in the instant criminal miscellaneous petition and it is dismissed.

(H.R. PANWAR), J.

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